

January 31, 2006

The Honorable Thad Cochran
Chairman
United States Senate
Committee on Appropriations
Washington, DC 20515

Dear Chairman Cochran:

In Senate Report 109-088, a report and bill on the appropriations for the Departments of Commerce and Justice, science, and related federal agency appropriations for FY06, the Senate Committee on Appropriations directed the U.S. Commission on Civil Rights (the "Commission") to produce two written reports outlining in detail the implementation of agency reforms as adopted by a vote of the Commission in April 2005. The Commission submitted its first report on September 30, 2005. This is, therefore, the second of two requested reports on the structural and management reforms at the Commission that will lead to more efficient and effective management.

As the Committee is aware, beginning in the 1990s and continuing through early 2005, the Commission was criticized for poor management practices. Under the direction of new leadership, the Commission has worked to resolve profound management and financial challenges that developed over a period of many years. The problems inherited are rooted in neglect, mismanagement, and financial pressures resulting from a stagnant budget. Improvement in the policies and procedures governing financial management at the Commission began in fiscal year 2005 (FY05) though the fruit of these labors will continue, mature and ripen over time. On September 30, 2005, the Commission reported numerous agency reforms, including:

- Creating document control checklists for the procurement office to ensure that procurement activity is accurately documented and supported;
- Developing policies delegating micro-purchasing authority to office and division heads; Converting to a Web-based travel management system;
- Entering into an agreement with the General Services Administration (GSA) for accounting services;
- Providing funds to train staff with procurement authority;
- Requiring monthly reports on project costs to better justify future requests for additional resources and to allocate existing resources;
- Adopting new national office project planning procedures;
- Adopting revised policies governing internal and external communications;
- Reviewing reporting and annual internal assessment procedures to create sound management practices and develop reliable self-assessments;

- Strengthening overall agency external reporting procedures and monitoring agency compliance;
- Creating a staff position to assist the Staff Director in developing, coordinating, and implementing the agency's reforms;
- Selecting an experienced financial manager to head the agency's Budget and Finance Division and work closely with GSA; and
- Developing a draft Strategic Human Capital Plan and a draft Human Capital Accountability System.

In the few months since September 2005, the Commission has continued to move aggressively to reform its management and operations by:

- Producing a procurement guide for use by procurement and budget personnel, and office and division heads with delegated procurement authority;
- Implementing policies and procedures to ensure compliance with the Anti-Deficiency Act;
- Formalizing the requirement to properly document and maintain non-salary related financial transaction files, including justification of procurement decisions and processes;
- Requiring purchase orders be issued before goods and services are purchased;
- Creating procedures for requesting authorization of unauthorized commitments;
- Providing formal training to key procurement personnel;
- Requesting a Program Assessment and Rating Tool (PART) review by the Office of Management and Budget (OMB);
- Issuing revised guidance of the creation of the agency's annual performance-budget;
- Providing management with monthly project cost information necessary to support decision-making, and foster budget and fiscal accountability;
- Developing meaningful project reporting categories, in consultation with OMB, during the apportionment process;
- Formulating and issuing specific apportionment and allotment procedures consistent with OMB Circular A-11;
- Establishing agency goals, principles, and financial controls consistent with the requirements of OMB Circular A-11 on administrative control of funds, OMB Circular A-123 on management's internal control responsibilities, and OMB Circular 127 on financial management systems;
- Undertaking a strategic planning process that has resulted in a draft Strategic Plan and ongoing consultation with congressional and other stakeholders;
- Issuing formal travel guidance that is comprehensive and consistent with the *Federal Travel Regulation* (FTR);
- Complying with the Accountability of Tax Dollars Act, for the first time since the Act was passed;
- Submitting the agency's first Performance and Accountability Report (PAR);
- Creating procedures to ensure the timely preparation of annual Commission PARs;
- Bringing GSA fully onboard, as of October 1, 2005, as the agency's accounting services provider;
- Creating guidance on the reconciliation of accounts and records;

- Creating timelines, in conjunction with GSA, for processing financial transactions to avoid Prompt Payment Act violations;
- Bringing onboard, as of October 17, 2005, a new chief for the Budget and Finance Division to work closely with GSA;
- Formalizing previously adopted Commission motions on national office project development;
- Formalizing previously adopted Commission motions on internal and external communication policies and procedures;
- Adopting policies on State Advisory Committee (SAC) membership criteria and member terms; and
- Creating a working group to propose draft Commission guidance and administrative procedures that ensure the quality and integrity of information disseminated by the Commission.

Each of these post-September 2005 reforms is discussed in more detail in this report. Several reforms reported in September are described to provide context.

Central to Commission project resource management, including GPRA reporting, is improved data collection. Consequently, the agency revised its project accounting code system to provide management with cost information to support decision-making related to program planning, program activity (i.e., hearings, briefings, investigations, reports, etc.) management and evaluation, and budget and fiscal accountability. Revised Administrative Instruction (AI) 3-6, *Management of Project Account Codes*, was issued in January 2006.¹ Working with GSA, the Commission's budget chief learned to retrieve cost data from GSA's accounting system. Generally, the monthly cost reports are based on financial information collected by using project codes assigned to specific agency program activities, and disaggregating the information by budget object codes. The information is reported to the Staff Director, office and division heads, and others designated by the Staff Director. AI 3-6, and other reforms, put into practice GAO recommendations concerning the need to track the use of budgetary resources, the need to have sufficient cost information available for agency decision-makers, and the need to work with the Commission's current accounting services provider to develop policies and procedures for processing and reporting financial transactions.

Like tracking project costs, assessing agency programs (including their resources, planning and design, measures and evaluation, management, and decision-making), and identifying areas of strength and weakness are essential parts of GPRA and performance budgeting. By undergoing a Program Assessment and Rating Tool (PART) review, agencies examine all these areas and identify ways their programs can become more efficient and effective. Consequently, after considering the costs and benefits of conducting a program self-assessment, the Commission requested an OMB PART in November 2005. This review, as recommended by GAO, will provide valuable feedback on agency program performance and the planning process. The Commission's PART is likely to commence during the spring of 2006.

¹ This AI also expanded and formalized an earlier internal memorandum making the Commission's chief budget officer responsible for providing monthly reports on projects and other program activity costs.

The Commission issued a comprehensive, written travel policy to ensure compliance with *Federal Travel Regulation* (FTR) and to eliminate waste and abuse. The policy, formalized in new AI 3-14, *Official Travel*, establishes that an approved travel authorization is necessary prior to creating any travel obligations, establishes that vouchers must be submitted within 5 working days following completion of travel, and establishes that all Commission travelers require adequate documentation of travel expenditures. Furthermore, it establishes criteria for determining what constitutes an allowable travel expense, and creates review/approval/certification authority and procedures. The result of AI 3-14 is the elimination of travel abuse and waste resulting from improper and late travel payments and, importantly, the accomplishment of the agency's mission in the most economical and effective manner possible, with due consideration to budget constraints and the reasonableness of travel costs.² Overall, this policy, and the Commission's new Web-based travel management system, ensures that travelers understand agency and federal travel requirements, addresses GAO concerns about the absence of Commission travel policies and procedures, and resolves any uncertainty about required travel documentation.

Over the last several months, the Commission addressed procurement-related shortcomings by drafting a *Procurement and Acquisition Guide*. The guide provides the basics for reasonably ensuring that the Commission's procurement activities are conducted efficiently and economically. It seeks to ensure that agency activities are conducted in a manner above reproach and, except as authorized by statute or regulation, that activities are conducted with complete impartiality and without preferential treatment for any group or individual. Guidance is provided on Commission delegations of authority, review and approval requirements, simplified acquisition methods used by the agency, simplified acquisition procedures and requirements, Prompt Payment Act requirements, vendor/contractor performance evaluation, file documentation and maintenance, Federal Procurement Data Center reporting, and other matters. It also includes Commission forms and checklists to ensure documentation of procurement activities, appropriate competition, determination of price reasonableness, and compliance with applicable provisions of the *Federal Acquisition Regulation* (FAR).

Related to agency procurement, the agency also created written policies, goals and procedures for ensuring that Commission procurement actions are properly authorized and documented in the form of AI 4-21, *Updated Guidelines for Procurement of Goods and Services*, and AI 4-16, *Acquisition Management*.³ These AIs define what constitutes an unauthorized commitment, create procedures for ratifying unauthorized commitments, and reaffirm the requirements that the budget office certify the availability of funds and that a purchase order is issued before an acquisition.⁴ The *Procurement and Acquisition Guide*, along with these AI, will resolve the procurement weaknesses identified by GAO.

To protect the integrity of the agency's procurement activities, procurement training remains a Commission priority. Improving competence in contracting ensures Commission compliance

² U.S. Commission on Civil Rights, Administrative Manual, Administrative Instruction (AI) 3-14, *Official Travel* (November 16, 2005).

³ U.S. Commission on Civil Rights, Administrative Manual, Administrative Instruction 4-21, *Updated Guidelines for Procurement of Goods and Services*, (March 11, 2005).

⁴ U.S. Commission on Civil Rights, Administrative Manual, Administrative Instruction 4-16, *Acquisition Management*, (September 9, 2005).

with the FAR and deters waste and abuse. The agency identified procurement training as a high-priority for its modest training funds, enrolling procurement staff in skills development courses. In January 2006, the chief of the procurement office participated in training on simplified acquisition procedures related to Part 13 of the FAR. Upon completing this course, this procurement official will possess enhanced knowledge of the laws governing the use of required sources and simplified acquisitions, the responsibilities and authority of participants in the procurement process, and purchase request evaluation considerations. In addition, the training course supports the procurement office's technical expertise in the areas of making source of supply decisions and administering the overall procurement process. Future training, scheduled for March and April 2006, focuses on contract formation and administration. By participating in these courses, Commission procurement personnel will learn the proper way to solicit offers and quotations, perform bid evaluations, evaluate proposals and quotations, award contracts, and monitor contractor performance. Ongoing procurement training is critical to the agency's response to GAO findings that several Commission transactions appeared to be in violation of the FAR and that procurement staff are inadequately trained.

The agency revised policies last issued in the 1990s on budget preparation and execution as a part of its reform initiative. The revised policy on budget preparation includes guidance on integrating financial resource management and agency performance under GPRA and OMB Circular A-11. As revised, AI 3-1, *Performance Budget Formulation*, ensures timely and more complete budget estimate submissions to OMB by:

- Identifying basic information required to support the Commission's budget estimate, including documentation of actual and planned performance and the use of budgetary resources by offices and divisions;
- Creating a timeline and a process for completing key budget preparation activity;
- Assigning areas of responsibility at various stages of the budget preparation process; and
- Revising agency program plans, and budget expenditures, to conform to the Commission's actual congressional appropriation.

This AI, along with other reforms, addresses GAO recommendations for tracking project costs to provide decision-makers with financial information, improving GPRA compliance, and formally making adjustments in program and spending plans to reflect budget realities.

The Commission also revised outdated policies and concepts for apportioning and allotting the Commission's budget, and the operation of its financial systems (budget and accounting) and controls. The new policy is consistent with OMB Circular A-11 § 150 on "Administrative Control of Funds," OMB Circular A-123 on management's responsibility for creating effective internal control, OMB Circular 127 on financial management systems, and other applicable federal laws and regulations. Revised AI 3-2, *Budget Execution*, creates accountability and specificity regarding financial management and clarifies agency operating goals, principles, and processes. It also ensures the ability of the agency to accurately monitor and track its financial resources, including detecting violations of the Anti-Deficiency Act. Of particular interest in the updated AI is the:

- Requirement to develop budget-operating plans and conduct budget execution reviews.
- Obligation to reconcile accounts and reporting.

- Responsibility to (and procedure for) submit unaudited quarterly financial statements.
- Delegation of authority to make apportionment and reapportionment requests, and the review and approval procedures.
- Use of the allotment process to decentralize agency budget authority and accountability.
- Establishment of specific management duties and responsibilities.
- Mandate that transactions be approved or certified.
- Promptly disclose requirement for obligations and commitments incurred without proper authorization or approval.
- Establishment of Anti-Deficiency Act procedures.

The shortcomings in previous Commission procedures and policies are well documented in GAO's April 2005 report on Commission financial management. AI 3-6, in concert with other budget-related reforms, addresses those shortcomings.

A related financial management policy change instructs the chief of the Budget and Finance Division to ensure compliance with GAO's *Standards for Internal Control in the Federal Government*.⁵ AI 3-16, related to budget AI 3-1 and AI 3-2, and issued in March 2005, provides a detailed list of specific activities required to ensure that Commission non-salary related transactions are properly authorized, approved, and supported by appropriate documentation. This AI directs, for example, that accounts be periodically reviewed, that support for financial transactions be maintained, and that transactions be promptly processed.

Consistent with AI 3-2, during the apportionment process for FY06, the Commission worked with OMB to identify meaningful program reporting categories that could be used to report Commission obligations against its SF-133 report on the use of budgetary resources. This collaboration did, in fact, result in changes to the Commission's apportionment reporting categories. Unlike previous apportionment schedules, the FY06 apportionment schedule includes a budget breakdown by approved national office projects. Following apportionment, the Commission's budget office creates budgetary allotments and spending plans for Commission offices and divisions to support their operations. The allotments and spending plans create accountability for managers for the operation of their offices/division within their resources. The Commission's apportionment and allotment policies are contained in revised AI 3-2, *Budget Execution*, as mentioned above.

By retaining an accounting service provider that is compliant with applicable federal accounting standards, consulting with that provider on the development of agency policies and procedures for verifying, recording, and reporting transactions, and developing Prompt Payment Act procedures, the Commission addressed GAO's recommendations dealing with timeliness, documentation, and the existence of appropriate controls. On October 1, 2005, GSA became the Commission's accounting services provider. In this role, GSA files reports necessary and required by Treasury and OMB for the Commission to be in good standing. In addition, the Memorandum of Understanding with GSA recognizes that GSA will provide accounting services that include such functions as accounts payable, accounts receivable, billing, disbursements, delinquencies, travel payments, input and monitoring, and financial statement preparation and

⁵ *Standards for Internal Control in the Federal Government*, (GAO-AIMD-00-21.3.1), Government Accountability Office, Washington, DC, November 1999.

analysis. GSA also collaborates with the Commission on revisions to budget management and execution controls. With GSA, the Commission no longer uses informal agency “cuff records” to determine its account balances for agency decision-making but, instead, uses internal records to track the processing of financial transactions by GSA and works with GSA to reconcile accounts periodically. Additionally, the timeliness and accuracy of the financial information and reporting has improved.

The Commission and GSA have agreed to timelines for workflow that include, for example, allotting GSA five working days for processing obligating documents. Invoices and proper other payment requests must be paid within 30 calendar days. By agreement, payment invoices are received directly by GSA from Commission vendors and all payments must be promptly made by GSA to avoid violation of the Prompt Payment Act. Copies of invoices are provided to the Commission’s budget office to ensure certification of receipt of goods/services and proper authorization before payment.

In August 2005, the former chief of the Budget and Finance Division retired from the Commission. As of October 17, 2005, a new financial manager leads the Commission’s budget office. Under new financial leadership, the Commission is working closely and cooperatively with GSA to ensure that the Commission’s accounting and finance systems meet applicable government standards. To support this relationship, bi-weekly meetings or conference calls are being scheduled with GSA to troubleshoot issues, and make any required adjustments to the accounting and budget processes. In addition, the process of revising several policies on financial transactions involved consultation with GSA. Revisions to sections of the *Procurement and Acquisition Guide* and several AIs discussed throughout this report, including AIs 3-1, 3-2, 3-6, and 3-14, involved input from GSA.

Recently, the Commission received the results of its first Accountability of Tax Dollars Act audit. Never before has the Commission retained a firm to conduct a full audit of its financial operations. In fact, the FY04 balance sheet only audit, was initiated prior to the December 2004 leadership transition, has yet to be completed by the firm of Parker, Whitfield & Company. The FY05 audit, conducted by the experienced financial management and accounting firm of Williams, Adley & Company, included a review of the Commission’s balance sheet and related statements of net cost, changes in net position, budgetary resources, and financing for FY05, as well as an assessment of the agency’s internal controls and legal compliance. Even though the audit report finds weaknesses and areas of noncompliance, it also acknowledges that the Commission has already made several changes, or has imminent plans for remedial measures, as a part of its ongoing reform initiative. The FY05 audit executes a GAO recommendation to comply with the Accountability of Tax Dollars Act.

While the Commission’s management response to the audit report includes remedial measures, the agency is currently working with a consulting firm to augment the agency’s remediation plan by February 15, 2006. Thereafter, the consultant will work with the Commission create a more expansive corrective action plan that will prepare the agency for future audits.

With the completion of the audit report, the Commission submitted its first Performance and Accountability Report.⁶ This report integrates the Commission's program and financial performance during FY05 and presents an assessment of the relative effectiveness of agency operations during a transitional year that saw a change in agency leadership late in the first fiscal quarter. As a whole, the Commission's PAR demonstrates an increasing capacity to report program costs, to evaluate actual and target performance, and to identify obstacles to achieving planned performance goals in comparison to previous Government Performance and Results Act (GPRA) reports submitted by the agency. In addition, the PAR includes a discussion of the status of the Commission's efforts to carry out GAO and OPM recommendations.

During the PAR preparation process, the ongoing significance of the Commission's strategic plan and annual performance plan to the proper evaluation of outcomes was reaffirmed. The 1997 strategic plan is primarily output-driven and, as such, continues to hinder the ability of the agency to fully measure its effectiveness and meet the requirements of GPRA. Though the Commission completed a draft FY2006 – 2011 Strategic Plan in October 2005, the agency continues to meet and consult with congressional staff, OMB, and others to refine its draft plan and improve its GPRA reporting as recommended by GAO. Due to the importance of the congressional consultations, the Commission extended its reform implementation date to ensure that congressional concerns are fully addressed.⁷ At the conclusion of the strategic planning process, the agency will not only be able to adopt its FY 2006- 2011 Strategic Plan, but also to finalize and implement its draft Strategic Human Capital Plan and a Human Capital Accountability System to increase workforce accountability and improve the management of human capital. Jointly, these plans and system create a blueprint for improving agency performance by gathering data, and monitoring and evaluating the use of human capital relative to the agency's mission and strategic plan.

Like the financial management reforms discussed above, the Commission also made substantial progress in reforming agency program and project management. Motions adopted by Commissioners in May 2005 corrected previously documented project planning weaknesses, and internal and external communications procedures that limited the ability of the agency to communicate effectively its civil rights mission, vision, and policies. These motions were formalized in January with the revision of AI 1-6 on national project development, AI 9-1 on public affairs, and AI 9-2 on internal communications. Other project-related reforms include the creation of a working group to develop draft guidance on information quality, and changes to the membership of the State Advisory Committees (SACs). Each is discussed, in turn, in the remainder of the report.

AI 1-6, *National Project Development and Implementation*, incorporates a previous Commission vote on national project development. The AI provides increased Commissioner involvement during the background and planning, discovery, and report drafting stages of projects. During the background and planning stage, Commissioners are provided an outline of projects that includes a summary of research, a discussion of the scope and direction of the project, a

⁶ The Office of Management and Budget granted a Commission request for an extension of time for submitting its PAR to allow for the completion of the FY05 audit report by the firm of Williams, Adley & Company. The completion of the audit report was delayed pending the results of a FY04 balance sheet audit by the firm of Parker, Whitfield & Company. The FY04 results, however, were not forthcoming, as noted in the audit report by Williams, Adley & Company.

⁷ U.S. Commission on Civil Rights, Washington, DC, meeting, transcript, January 20, 2006, pp. 134-35, 151-52.

statement on the proposed project methodology, and a project completion timeline. Commissioners also guide the discovery stage of projects through a procedure requiring their review and approval of interrogatories, subpoenas, document requests and other requests for information from external sources. No discovery takes place until Commissioners approve a discovery plan. Opportunities to shape project reports, including the findings and recommendations, are created by providing Commissioners a first draft of each project report for review and comment before Commission staff prepares a final draft. All final staff draft reports, to the extent possible and as supported by a majority of Commissioners, reflect comments received from Commissioners. Commissioners, upon receiving a final staff draft report, subject the draft to debate and discussion. A draft final report is either approved or rejected in whole, or severed into separate sections and voted on section-by-section. Dissenting statements are allowed and are either published in a separate statement at the end of the report or integrated into the text of the entire report. These project reforms increase the probability that a majority of the Commissioners will support Commission reports and ensure that dissenting opinions are reflected in reports. These reforms also maximize the efficient use of staff resources by providing early substantive guidance that decreases the amount of time devoted to significantly revising reports and making passage of report more likely. AI 1-6 also provides increased project cost information to Commissioners, during and after the project planning process, and requires dates and deliverables sufficient to monitor and track the progress of projects as recommended by GAO.

The two revised policies governing internal and external communications also reflect a prior Commission vote to increase transparency, create a method for Commissioner-staff communications, increase communications regarding projects, clarify rules concerning the making of formal statements on behalf of the Commission, and ensure the creation of institutional memory regarding Commission policies adopted during monthly business meetings. AI 9-1, *Public Affairs Unit*, designates the Chairman and the Staff Director as the spokespersons for the Commission. It also provides that individual Commissioners may speak to matters before the Commission in their individual capacities. AI 9-2, *Internal Communications*, like AI 1-6, responds to a GAO recommendation that the Commission increase Commissioner involvement in projects and reports by creating a procedure for handling Commissioner requests to staff for information on pending projects. It also facilitates staff contact with individual Commissioners for the purposes of obtaining Commissioner input and expertise on proposed and ongoing projects.

In January 2006, the Commission agreed to adopt a final rule on SAC membership criteria⁸ seeking a diversity of skills and experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis on its State Advisory Committees. Educators, lawyers, business and labor leaders, social scientists, researchers, and news gatherers are some of the more important professions, activities, and avocations sought for these advisory committees. Other skills include knowledgeable of state governmental machinery and public service sector, and experience in such influential sectors as business and financial communities, organized labor, the news media, and religious organizations. The final rule was drafted after a proposed rule was published earlier for public comment. The new rule will become final after publication in the Federal Register.

⁸ U.S. Commission on Civil Rights, Washington, DC, meeting, transcript, January 20, 2006, pp. 132, 153-55.

Related to supporting the integrity of the Commission's written work product, pursuant to Section 515 of the fiscal year 2001 Treasury and General Government Appropriations Act, the agency recently created an Information Quality Guidelines Working Group to draft proposed guidelines and administrative procedures that will ensure and maximize the quality, objectivity, and integrity of agency reports and other disseminated information. The working group will present its proposed guidance in March 2006.

As is evident from the scope of reforms discussed in this report, the Commission is committed to serving as the nation's conscience on civil rights matters but also as a model of management excellence, integrity, efficiency, and accountability. In light of the importance of the mission that the Commission serves, the American people deserve no less from this agency. This status report depicts the progress made by the Commission in FY05 and thus far in FY06. While GAO and OPM recommendations have been implemented, work remains to be done. Strategic planning and at least two other related management reforms are pending completion following the conclusion of consultation with congressional stakeholders. The agency, as well, will implement audit report recommendations contained in the January 2006 audit report.

I appreciate this opportunity to report on the Commission's reformation under new leadership.

Very truly yours,

KENNETH L. MARCUS
Staff Director